

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

## REGION IV

IN THE MATTER OF:	)	PROCEEDING UNDER SECTIONS 104,
	)	122 AND 106(a) OF THE COMPREHENSIVE
Saad Trousdale Road	)	ENVIRONMENTAL RESPONSE,
Nashville, Tennessee	)	COMPENSATION, AND LIABILITY ACT OF
	)	1980, AS AMENDED BY THE SUPERFUND
	)	AMENDMENTS AND REAUTHORIZATION ACT
	)	OF 1986, 42 U.S.C. SECTIONS 9606(a)
Saad Trousdale Road	)	AND 9622
	)	
Respondent.	)	Docket No.: 90- -C
	)	

ADMINISTRATIVE ORDER BY CONSENTI. JURISDICTION

The following Administrative Order by Consent ("Consent Order") is entered into by the United States Environmental Protection Agency ("EPA") and the parties listed in Appendix A (hereinafter "Respondents") EPA acts pursuant to the authority vested in the President of the United States by Sections 104, 106, and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sections 9604, 9606, and 9622, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), P.L. No. 99-499, and delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580 dated January 23, 1987, 52 Fed. Reg. 2922, and further delegated to the Regional Administrator of Region IV, EPA, and redelegated to the Director, Waste Management Division. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), the State of Tennessee has previously been notified of this Order.

The Respondents agree to voluntarily undertake all actions required of them by the terms and conditions of this Consent Order for the conduct and implementation of part of a removal action on property owned by Ellis and Kathy Saad at the following location:

Saad Trousdale Road Site  
3655 Trousdale Road  
Nashville, Tennessee.

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Solely for the purposes of this Order, the Respondents consent to and agree not to contest EPA jurisdiction to issue this Order. Respondents consent to jurisdiction for purposes of entry and enforcement of this Order by EPA. Provided however, the Respondents do not admit, accept, concede, or acknowledge the determinations, allegations, findings of fact, conclusions of law, and determinations made by EPA in this Order and specifically reserve the right to contest any such determinations, allegations, findings, conclusions of law, and determinations in any proceeding regarding the Saad Trousedale Road Site (hereinafter called the "Site") other than actions brought by EPA to enforce this Order.

Respondents' agreement to this Order shall not be construed as an admission of liability and the fact of Respondents participation in this Order shall not be admissible in any proceeding other than actions brought by EPA to enforce this Order. Furthermore, Respondents specifically deny any fault or liability under CERCLA/SARA or any other statutory or common law and any responsibility for response costs or damages thereunder, and do not, by signing this Order, waive any rights they may have to assert claims under CERCLA/SARA or any other statute or common law against any person, other than EPA, as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

## II. PARTIES BOUND

This Consent Order shall apply to and be binding upon the following Parties:

1. The Respondents, their agents, officers, directors, employees and successors, assigns, and all persons, including, but not limited to firms, corporations, contractors and consultants, acting under or for the Respondents; and
2. The United States Environmental Protection Agency (EPA) and its agents, employees and contractors acting under or for EPA.

III. EPA'S FINDINGS OF FACT

For the purposes of this Consent Order, EPA finds that:

1. The Saad Trousdale Road Site is located in an industrial/commercial district in Nashville, Tennessee.
2. Oil and solvents have been detected in soil on site. There is a fence around the property. However, it does not fully enclose the property and access to the site is not limited. There are five tanks containing an oil based substances. Two of the tanks are open. There are exposed drums on site.
3. Results of EPA sampling have indicated the presence of waste oil, herbicides, methylene chloride and other solvents, and various metals at the site, in both the groundwater, and in the soil still present on the site.
4. Hazardous substances as defined in Section 101(14) of CERCLA and subject to the terms and provisions of that Act are present at the Site.
5. There is reason to investigate whether there is a sinkhole on site. There is reason to investigate whether stormwater runoff from the site is contributing to flooding problems in the area.

IV. EPA'S CONCLUSIONS OF LAW

Based on EPA's Findings of Fact set out above, EPA concludes that:

1. The above-referenced Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Respondents are a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
3. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), are present at the Site.
4. Potential for migration of hazardous substances from the Site constitutes an actual or threatened release of a hazardous substance into the environment within the meaning of Section 101(22) and 106(a) of CERCLA, 42 U.S.C. Sections 9601(22) and 9606(a).

V. EPA'S DETERMINATION

Based on the foregoing Findings of Fact and Conclusions of Law, and the entire record of this proceeding, the Regional Administrator has determined that:

1. The release or threat of release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare or the environment;

2. In order to protect public health and welfare and the environment, it is necessary that action be taken to mitigate the release and threat of release of hazardous substances from the facility into the environment; and

3. The actions required in this Consent Order are consistent with the National Contingency Plan, 40 C. F. R. Part 300.

VI. ORDER

The Parties having reached a resolution of the issues involved in this proceeding, it is therefore AGREED and ORDERED that Respondents shall undertake the following activities pursuant to CERCLA Sections 104, 106, and 122, 42 U.S.C. Sections 9604, 9606, and 9622:

1. Within five (5) days of the effective date of this Consent Order, Respondents shall begin work to:

- a. overpack and dispose of the exposed drums on site; and
- b. dispose of the contents of the tanks on site.

Respondents shall implement quality assurance/quality control procedures, in accordance with paragraph 8 of this Order, for the laboratory that will be analyzing samples from the site and for the contractor taking samples at the site. Respondents shall implement a site safety plan in accordance with OSHA standards. Respondents shall complete removal of the drums and tank contents as soon as possible and will seek to accomplish this work within one hundred twenty (120) days of the effective date of this Consent Order unless good cause for an extension is shown. Good cause shall include delays caused by disposal facility backlogs or other problems which are beyond the control of Respondents.

2. Within thirty (30) days of the effective date of this Consent Order, Respondents shall submit a proposed work plan to EPA for:

- a. Evaluating (i) whether there is a sinkhole on site; (ii) whether it is an active source of contamination; and (iii) if a sinkhole is found, general alternatives for remediation.

The work to be performed under the work plan shall be limited to:

-- reviewing the past history of the Site;

-- conducting limited sampling to determine the extent of contamination in the sinkhole; and

-- submitting to EPA a report on findings related to the sinkhole and general estimates as to the cost of remediation alternatives for any sinkhole area on Site.

- b. Evaluating the necessity for redirection of stormwater runoff from the site.

3. Within ten (10) days of approval of the work plan by EPA through its On-Scene Coordinator of the work plan submitted in accordance with paragraph 2, actions specified in the work plan will be initiated.

4. Respondents will complete all actions specified in the work plan submitted in accordance with paragraph 2 within one hundred twenty (120) days after approval of the work plan.

5. Any offsite disposal facility utilized must be in compliance with EPA's Offsite Policy. Respondent shall provide adequate verification and documentation that any wastes removed are treated and/or disposed of at approved RCRA treatment and/or disposal facilities.

6. Respondents shall comply with all federal, state and local laws applicable to any action above.

7. All removal work performed pursuant to this Order shall be under the direction and supervision of a qualified professional with expertise and experience in hazardous waste site cleanup. Respondents shall notify EPA as to the identity of such professional and of any contractors and subcontractors to be used in carrying out the terms of this Order in advance of their work at the Site.

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8. The Respondents shall use quality assurance, quality control, and chain-of-custody procedures in accordance with EPA, Region IV, Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, April 1, 1986) throughout all sample collection and analysis activities. The Respondents shall consult with EPA in planning for, and prior to, conducting sampling and analyses, and prior to transportation and disposal of any hazardous substances or hazardous wastes.

9. All sample collection, sample preservation, chain-of-custody, laboratory analyses, and quality assurance procedures utilized by Respondents pursuant to this Consent Order shall be documented and made available to EPA upon request.

10. Upon request by EPA, Respondents shall provide EPA or its designated representatives under this Consent Order, with duplicate and/or split samples of any samples collected in furtherance of work performed in accordance with this Consent Order and EPA agrees to provide to Respondents the results of any analysis performed by EPA on such samples. Similarly, EPA shall also provide Respondents, upon request, with duplicate and/or split samples and resulting analyses for any samples collected by EPA at this Site.

11. Respondents shall appoint a Project Coordinator who shall be responsible for implementation of this Consent Order and the activities required herein. All reports, comments and other correspondence directed to Respondents will be made available to the Project Coordinator. Respondents reserves the right to change the Project Coordinator upon sufficient written notice to EPA.

12. EPA shall appoint an On-Scene Coordinator (OSC) who shall have the authority vested by the National Contingency Plan at 40 C.F.R. Part 300. The OSC will be EPA's designated representative at the Site, and will have the right to move freely about the Site at all times when work is being carried out pursuant to this Consent Order. The OSC will advise Respondents as soon as the OSC becomes aware that any action taken pursuant to the work plan is not consistent with the National Contingency Plan.

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13. All correspondence, reports, work plans and other writing required under the terms of this Consent Order to be submitted to EPA shall be sent by certified mail, return receipt requested, to EPA's On-Scene Coordinator, Rita Ford, at the following address:

Rita Ford  
On-Scene Coordinator  
U.S. EPA - Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365  
404/347-3931

14. All correspondence, reports and other writings required under the terms of this Consent Order to be submitted to Respondents shall be by Certified Mail, return receipt requested, to the following:

15. All records produced by Respondents and delivered to EPA in the course of implementing this Consent Order shall be available to the public unless identified and substantiated as confidential business information by Respondents in conformance with 40 C.F.R. Part 2. Records so identified shall be treated as confidential only in accordance with the applicable confidentiality regulations. No sampling and monitoring data or hydrological or geological information shall be considered confidential.

16. Respondents shall designate a representative who shall preserve all records developed pursuant to implementation of this Consent Order for a period of at least three (3) years following completion of all work conducted by Respondents pursuant to this Consent Order.

17. Respondents shall not prevent access to the Site by EPA or its employees, contractors and consultants, or designated representatives, subject to the following paragraph.

To the extent that areas covered by the work are presently owned by parties other than those bound by this Order, the Respondents have obtained or will use their reasonable efforts to obtain Site access agreements from present owners and possessors. Such agreements shall provide reasonable access by EPA and/ or their authorized representatives. In the event that Site access agreements are not obtained within a reasonable time frame, the Respondents shall notify EPA as soon as feasible regarding both the lack of, and efforts to obtain, such agreements. In such event, EPA will assist the Respondents, or assume the responsibility for obtaining such access. Failure by Respondents to execute the activities required under this Order because of a failure to obtain Site access agreements, after use of all reasonable efforts, does not constitute a violation.

18. Upon agreement of the Parties, this Consent Order shall be amended as necessary to address any additional removal work necessary to adequately decontaminate the Site in order to protect public health and the environment or for any other reasons as the Parties may find mutually desirable.

19. Any amendments pertaining to the work to be accomplished or any activities required hereunder must be reduced to writing by a duly authorized representative of the Respondents and the OSC within 48 hours after agreement is reached, so that there will be no delay in accomplishing the work requirements.

20. In the event Respondents and EPA are not able to agree to modifications, if any, to the Consent Order. EPA reserves all rights to take such actions as it deems necessary, including the issuance of a unilateral order, and Respondents reserves all rights to contest such actions.

21. In the event that the OSC determines that activities implemented by Respondents are not in compliance with this Order or that any other circumstances or activities are creating an imminent and substantial endangerment to the public health or welfare or the environment, the OSC may order Respondents to halt further implementation of this Order for such period of time as is necessary to abate the endangerment, provided that EPA provides Respondents with a reasonable opportunity to abate the endangerment. In addition, EPA reserves the right to carry out all activities pursuant to this Order and such other activities as it deems necessary and consistent with the NCP, including but not limited to Federally funded response activities and subsequent cost recovery actions. Respondents reserve the right to contest any actions taken by EPA under this paragraph.



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22. Neither the United States nor any agency thereof, shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, its officers, directors, employees, agents, servants, receivers, trustees, successors, or assigns, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this Consent Order.

23. Respondents acknowledge that EPA will incur costs at the Site after the effective date of this Order for oversight of Respondents' activities at the Site. EPA agrees to seek reimbursement first from potentially responsible parties that are not respondents under this Consent Order or a Consent Order for the second phase of work to be performed at the Site ("nonrespondents"). EPA will use reasonable efforts to seek reimbursement from nonrespondents whom EPA and DOJ determine to be liable and viable. Reasonable efforts shall include issuance of CERCLA Section 104(e) information request letters, field investigations at nonrespondents' facilities by cost recovery civil investigators, issuance of payment demand letters, and civil litigation through U.S. Department of Justice. The determination of whether or not reasonable efforts shall include field investigations and/or litigation against nonrespondents shall rest solely within the discretion of the EPA. Respondents shall fully reimburse EPA for oversight costs that cannot be recovered from nonrespondents within forty-five (45) days after receipt of EPA's written demand for payment. Payment shall be made by certified or cashier's check to "EPA Hazardous Substances Superfund" and sent to:

United States Environmental Protection Agency  
Region IV  
Attn.: Superfund Accounting  
P. O. Box 100142  
Atlanta, Georgia 30384

with a copy to:

Reuben Bussey  
Assistant Regional Counsel  
U.S. EPA - Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

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24. Respondents are advised that pursuant to Section 106(b) of CERCLA, willful violation of, or failure to comply with, this Consent Order, or any portion thereof, will subject Respondents to stipulated penalties of \$200/day for the first week, \$500/day for the second week, and \$1000/day thereafter. EPA reserves the right in unusual circumstances, to seek a civil penalty of not more than \$25,000 for each day in which such violations occur or in which such failure to comply continues. Failure to comply with this Consent Order, or any portion thereof, without sufficient cause, may also subject Respondents to liability pursuant to Section 107(c)(3) of CERCLA for damages in the amount of three (3) times the total of all costs incurred by the government as a result of Respondents' failure to take proper action.

25. Nothing herein is intended to release any claims, causes of action or demands in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site. This Consent Order does not constitute preauthorization of funds under Section 111(a)(2) of CERCLA. Further, Respondents waives any rights they may have to seek reimbursement from the Superfund under Sections 106(b)(2), 111 and 112 of CERCLA for any costs incurred or to be incurred by Respondents in performing the removal action at the Site and complying with the terms of this Consent Order.

26. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or any other writing submitted by the Respondents shall be construed as relieving the Respondents of their obligation to obtain such formal approvals as may be required herein.

27. Respondents' activities under this Consent Order shall be performed within the time limits set forth, unless performance is delayed by events which constitute a force majeure. For purposes of this Consent Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondents (for example, but not limited to, fires, natural disasters, riots, wars, unavoidable and unforeseeable labor strike, unexpectedly adverse weather conditions, contractor failures, and the unforeseeable inability to obtain necessary permits, authorization for Site access, licenses, certification). Increased costs incurred by Respondents in conducting the removal action or changed economic circumstances of Respondents shall not be considered as constituting a force majeure.

The Respondents shall notify EPA by telephone as soon as feasible and in writing no later than ten (10) business days from the date Respondents knew or should have known of any event which Respondents contend constitutes a force majeure as defined above. The written notice shall describe fully the nature of the delay, why the delay is beyond the control of the Respondents, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable by which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

Delay that results from circumstances beyond the control of the Respondents, on the Respondents' part shall not be deemed to be a violation of this Consent Order. To the extent a delay is caused by circumstances beyond the control of the Respondents, the schedule affected by the delay shall be extended to the extent necessitated by the delay.

28. The work described by this Consent Order is consistent with the National Contingency Plan (NCP) and the costs incurred by Respondents in performing this work shall not be considered to be a penalty.

29. EPA agrees that Respondents are not the only potentially responsible parties ("PRPs") at the Saad Trousedale Road Site, and the Respondents are entitled to contribution protection within the scope of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), from nonrespondents for work performed by Respondents under this Consent Order. EPA will use its best efforts to make certain that Respondents' cooperation in performing the work under this Order is recognized.

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30. The effective date of this Consent Order shall be the date that notice of its execution is received by the Respondents' designated representative.

For the U.S. Environmental Protection Agency:

\_\_\_\_\_  
Date: \_\_\_\_\_

Patrick M. Tobin, Director  
Waste Management Division  
U.S. EPA, Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

CONSENT

Respondents in the Saad Trousdale Road Site Administrative Consent Order have had an opportunity to confer with EPA and hereby consent to the issuance and terms of the foregoing Administrative Consent Order for performance of work at the Saad Trousdale Road Site in Nashville, Tennessee.

\_\_\_\_\_  
Respondent

\_\_\_\_\_  
Date